IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

CHARLESTON

LINDA S. SIGLER, aka LINDA S. MULLINS, DEFENDANT BELOW, APPELLANT

VS: **APPEAL NO. 34741**

STATE OF WEST VIRGINIA, PLAINTIFF BELOW APPELLEE

APPELLEE BRIEF ON BEHALF OF THE STATE OF WEST VIRGINIA

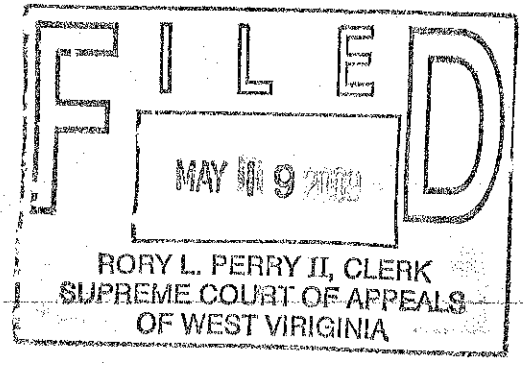

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TABLE OF AUTHORITIES

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STATEMENT OF THE CASE

The appellant appeals the Conviction Order of the Fayette County Circuit Court wherein the defendant entered a conditional plea of guilty to the felony crime of third offense driving while under the influence alcohol on August 5, 2008.

ISSUE PRESENTED

Whether a safety checkpoint conducted by the police for the purpose of checking licensure, vehicle registration, and auto insurance is violative of the appellant's constitutional rights?

STATEMENT OF FACTS

On January 27, 2008, the defendant entered a safety road check being conducted by the Gauley Bridge Police Department in Gauley Bridge, West Virginia at approximately 3:22 a.m. located at the intersection of State Route 39 and U.S. Route 60. All vehicles entering the area in

question were being asked to stop in a minimally intrusive manner. The purpose of the road check was to check vehicles and operators for proper registration, inspection stickers, drivers license and proof of insurance.

After being directed to stop, the defendant did so at the road check and Patrolman Burkhamer, of the Gauley Bridge Police Department, stepped toward the defendant's vehicle and requested to see the defendant's driver's license, vehicle registration, and proof of vehicle insurance. The officer smelt the odor of alcohol about the defendant's person and observed two open cans of Budlight beer in the center console of the defendant's vehicle. After this initial encounter, a standard inquiry into the defendant's level of sobriety was undertaken. The defendant was given and failed three standardized field sobriety tests and admitted to consuming five to six beers in the moments preceding the officer's inquiry. A check of the defendant's driving history revealed the presence of two prior convictions for the crime of driving under the influence alcohol. Thereafter, the defendant was arrested for third offense driving under the influence of alcohol.

CONCLUSIONS OF LAW

The sole issue presented in this case is whether the appellant's constitutional rights, as it pertains to the right to be free from unreasonable searches and seizures, has been infringed. This Court has addressed this issue in prior rulings and based on precedence, the seizure in question does not pose a violation of the appellant's constitutional protections.

The primary precedence on point is the case of State v. Davis, 195 W. Va. 79 (1995). In Davis, a motorist traveling to Marlinton, Pocahontas County was stopped at a safety checkpoint. As the motorist approached the roadblock, the car slowed suspiciously and upon speaking to the

driver, police officers detected the odor of alcohol and a subsequent DUI investigation and conviction resulted. Id. at 81-82. The appellant in that matter argued that the roadblock was an unreasonable search and seizure, as prohibited by the 4th Amendment of the United States Constitution and Article III Section 6 of the West Virginia Constitution, and was in fact a sobriety checkpoint, which must follow rules and procedures promulgated by the West Virginia Department of Public Safety guidelines and procedures.

The Court in Davis, citing State vs. Frisby, 161 W. Va. 734 (1978), stated, "While police officers may enforce the licensing and registration laws for drivers and motor vehicles respectively by routine checks of licenses and registrations, such checks must be done according to some non-discriminatory, random, pre-conceived plan such as established check points or examination of vehicles with particular number or letter configurations on a given day. . ." In short, the Court ruled that if a road block is established in a manner consistent with Frisby, it is not unconstitutional. Davis at 84.

In the instant case, it is established that the checkpoint in question was not placed in an area intended to intimidate motorists and was uniformly conducted, that is all vehicles passing the checkpoint were stopped in a minimally intrusive manner. The officer was given instruction by his superior officer to conduct safety checks in town when normal patrol duties were complete. Upon stopping the appellant's vehicle, the officers detected the odor of an alcoholic beverage about the appellant's person which created probable cause to initiate an investigation for driving under the influence of alcohol.

The authorities cited by the appellant previously authored by this Court are factually not

on point and are thereby not persuasive authority. The Court in Carte v. Cline, 194 W.Va. 233 (1995) addresses a DUI checkpoint, not a safety checkpoint, as exists in this case. Even so, the Court, again relying on Frisby, found that such stops are constitutionally sound so long as they are within the guidelines established by the Court in that decision and not random stops giving the police "unbridled discretion". Id. at 237. Furthermore the Court in Carte, citing the United States Supreme Court in Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990) adopted "the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state programs." Id. at 455.

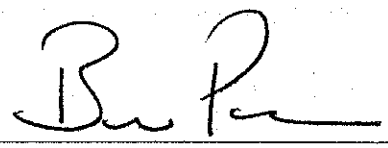
The appellant's citation of State v. Legg, 207 W.Va. 686 (2000) is off the mark. The Court in Legg dealt with the constitutionality of the Department of Natural Resources stopping random vehicles for the purpose of conducting a game-kill survey. There was no evidence in the Legg case that the officers had probable cause to stop the vehicle in question. The facts in this case bear little resemblance to the instant case, as the DNR officers were not randomly stopping vehicles, but rather targeted the defendant as part of a strategy to reduce illegal hunting.

CONCLUSION

The public interest to see that all citizens who drive on the highways and back roads of our state are properly licensed and insured and in condition to arrive to each driver's destination safely is an important concept born out our fundamental sense of fairness and desire to see that everyone is treated equally under the law. The public also wants to be reasonably certain that all motorists are required to pay all the necessary fees and costs to operate a motor vehicle.

However, the motoring public has an interest in the right of privacy and the right each of us has to be free from unreasonable searches and seizures. The delicate balance between the two interests is the responsibility this Court owes to that public. Without random, periodic safety checks, drivers who operate vehicles that are not insured or without licenses will only be discovered after an accident, when it is too late to protect the law abiding motoring public. In the case before this Court, the State's position is that the police officer's mode of operation on the night in question strikes the balance between the two important concepts in that the safety check in question was pre-planned, non-discriminatory in nature, equally applied and minimally intrusive. The removal of a habitual drunk driver from the highway which protects the safety of others is an unintended benefit of vigilant safety checks. Based thereon, the State respectfully requests this Court deny the relief sought and uphold the underlying conviction for third offense driving under the influence of alcohol against the appellant.

STATE OF WEST VIRGINIA
By Counsel



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